

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS UNION LOCAL NO. 710
PENSION FUND, and JAMES E. DAWES and NEAL J.
LONDON, Trustees, AND THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS UNION LOCAL NO.
710 HEALTH & WELFARE FUND, and JAMES E.
DAWES and NEAL J. LONDON, Trustees,

Plaintiffs,

v.

THE BANK OF NEW YORK MELLON CORPORATION,
a Delaware Corporation,

Defendant.

13-cv-01844
The Honorable Charles Norgle
Electronically filed

MOTION TO DISMISS THE COMPLAINT WITH PREJUDICE

Defendant The Bank of New York Mellon Corporation (the “Parent Corporation”), by and through its undersigned attorneys, respectfully submit this Motion to Dismiss the Complaint with Prejudice, together with the accompanying Memorandum of Law, incorporated herein, and the supporting Declaration of Rosaline Y. Chan, pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of its Motion, the Corporation states as follows:

1. This is an ERISA action seeking damages for losses Plaintiffs allege to have incurred as a result of their investments in a securities lending program administered by The Bank of New York Mellon (formerly The Bank of New York) (“BNY Mellon”).

2. The Complaint fails as a matter of law because the Parent Corporation, a holding company and parent of BNY Mellon, is not a fiduciary to Plaintiffs with respect to the actions subject to complaint. The Complaint alleges that the fiduciary relationship arises from the

securities lending agreements between Plaintiffs and BNY Mellon, which granted sole discretion to BNY Mellon to administer their securities lending accounts. The Parent Corporation was not a party to those agreements, and the Complaint's allegations are legally insufficient to confer fiduciary status upon the Corporation.

3. The Complaint also fails to state a claim under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

4. The claim alleging a breach of the duty of loyalty pursuant to ERISA § 404 and the claim alleging violations of ERISA Section 406 also fail as a matter of law because they are time-barred.

WHEREFORE, Defendant respectfully moves for the dismissal of the Complaint with prejudice.

Dated: June 7, 2013
Chicago, Illinois

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District of Illinois by using the CM/EF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/EF system.

Dated: June 7, 2013
Chicago, Illinois

Respectfully submitted,

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